IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 683 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

DHANESHBHAI DEVABHAI PATEL

Versus

STATE OF GUJARAT

Appearance:

1. Special Criminal Application No. 683 of 2002

MR NK MAJMUDAR for Petitioner No. 1

MR RC KODEKAR, APP for Respondent No. 1

RULE SERVED for Respondent No. 2-3

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 23/07/2003

ORAL JUDGEMENT

This petition under Article 226 of the Constitution of India has been filed by the petitioner

for quashing the order dated 23-5-2002 passed by the Sub Divisional Magistrate, Ankleshwar, as also the order dated 20-8-2002 passed by the Deputy Secretary, Home Department, Sachivalaya, Gandhinagar.

2. The facts in short are that an order dated 23-5-202 was passed by the Sub Divisional Magistrate, Ankleshwar under Sec.56-A of the Bombay Police Act, 1951 whereby petitioner was externed from the District Bharuch for a period of six months. It is the case of the petitioner that no witnesses were examined and even the complainant did not remain present. It is his further case that he has not been given any opportunity of hearing to defend his case. An appeal preferred before the appellate authority under Sec.60 of the Bombay Police Act was allowed which is giving rise to the present petition.

3. Heard learned advocate for the petitioner and learned APP for the State.

4. Learned advocate for the petitioner has raised many contentions in the petition. The only point to be taken into consideration by this Court is the interpretation of Sub-Section 3 of Section 60 of Bombay Police Act. Same has been interpreted by the Division Bench of this Court reported in 35(2) G.L.R. 1057 more particularly in para 6 which reads as under:

> "Section 60(3) of the Bombay Police Act, it becomes clear that the authority who hears the appeal can either confirm, vary or cancel or set aside the externment order, and his final order has to be in accordance with his earlier decision either to confirm or to vary or to cancel or to set aside the externment order. If he confirms the externment order, he has to say so in the body of the order and yet, if he is satisfied about such course being adopted, he may reduce the period of externment. If he varies the externment order, in that case also, he would have power to reduce the period of externment while confirming the basic order of externment. However, if he cancels or sets aside the externment order (decision not to confirm the externment order would be nothing short of saying that he cancels or sets aside the externment order), he would have no jurisdiction to retain the externment order for a period lesser than the period fixed by the externing authority."

5. In my opinion, case of the present petitioner is fully covered by the aforesaid judgment. It is the case of the present petitioner that appellate authority though not justified the externment order has modified the same, but has not quashed and set aside the order in its entirety and imposed the condition of bond. Hence, order passed by both the authorities are required to be quashed and set aside. Since the petitioner succeeds only on one point, he does not press other grounds.

6. In view of the above, the petition is allowed. Order dated 23-5-2002 passed by the Sub Divisional Magistrate, Ankleshwar, as also the order dated 20-8-2002 passed by the Deputy Secretary, Home Department, Sachivalaya, Gandhinagar, against the externee are quashed and set aside. Direct service is permitted.

(R.P.DHOLAKIA,J.)
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